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My name is Stephen Seymour and I am a 23-year resident of Dutchess County. I have been involved in wetlands work since 1981; having served on the Town of Carmel's Environmental Conservation Board in the early 1980's and involved in all aspects – delineation, permitting, functional assessment, mitigation, and mitigation monitoring – of wetlands science as a consultant in the Hudson Valley. I am a certified Professional Wetlands Scientist (by the Society of Wetlands Scientists) and a member of the New York State Wetlands Forum. I have worked extensively with NYSDEC and the Corps of Engineers for 20 years on wetlands and waterfront projects, and have worked with municipal wetlands ordinances in Westchester, Dutchess and Orange counties. I understand you have received comments from other citizens and attorneys and wish to offer my comments as a wetlands scientist.

**Specific Comments on the “Wetlands and Watercourses Law of the Town of Washington”:**

It appears that the intent of the proposed Law is to provide greater protection than that afforded by NYSDEC or USACE. While there are references to the relationship with state and federal permits in Section IX, Item D, there is no mention of how the local law would work with the USACE Nationwide Permitting Program, or the NYSDEC Dam Safety Program (Part 673). There should also be a statement of under what conditions the municipality will accept NYSDEC and/or USACE-accepted impact minimization and/or mitigation plans (such as compliance with the terms and conditions of the USACE Nationwide Permitting program and compliance with USACE NY District and NYSDEC conditions on the current Nationwide Permits) and under what conditions the municipality could request additional mitigation. With the available NYSDEC (SEQR, Article 24, Article 15, Dam Safety, and the Endangered Species Program) and USACE (the Nationwide and Individual Permitting Program) in New York, there is no need for a local law that is generally duplicative of existing regulations. USACE has recently issued further post-Rapanos guidance (ecological connectiveness) that amplifies their protection over potentially isolated wetlands. NYSDEC has also amplified their protection over state-listed special concern species, which includes some vernal pool dependent species (such as the marbled salamander).

I have delineated wetlands that have been one or two hundredths of an acre in size that have been incorporated as part of USACE Jurisdictional Determinations and for which a USACE permit would be required for disturbance. I have also mapped numerous wetlands that, while

not appearing on NYSDEC Freshwater Wetlands Maps, have been either incorporated as part of a State-regulated wetland based on proximity and water flow to a State-regulated wetland, or have been, based on acreage, deemed to be a State-regulated wetland.

- It should be part of the preapplication process (Page 8, Item B) with the Zoning Administrator so an Applicant knows if a SEQRLong Form EAF would be required.
- It should be clearly stated if it is the municipality's intent to accept a USACE and/or NYSDEC-validated wetland and watercourse boundary as a valid delineation.
- There should be a fee schedule based on the property size, extent of proposed impact (controlled area vs. the wetland), or other variables so an Applicant can gauge the expense of the municipal review.
- Both Items 16 and 20 reference impact assessment on "upstream and downstream areas" without providing any guidance of how far or how large the assessment area should be.
- The definition of "intermittent watercourse" fails to cite if the designation is based on typical rainfall patterns or not. My concern is the designation of an intermittent watercourse could be rejected by the municipality if the rainfall in all or part of the prior 12 months was below average.
- Wetlands feature a number and range of functions; NYSDEC identifies nine specific wetland benefits in Part 664 and uses wetland functions as part of their wetland classification system. The municipality should consider a function-based approach to wetland regulation also, providing protection to wetlands demonstrated to perform a variety of functions and an expedited approval process for wetlands that provide few functions or benefits, and a waiver of regulations and permit requirements for potentially protected resources that do not make a valuable contribution to the environment.

In summary, the draft law fails to provide a procedure to distinguish between potentially protected resources that make a valuable, definable contribution to the environment and those potentially protected resource that do not make a valuable or definable contribution to the environment. There is not a clear defined path or methodology that an Applicant can refer to in understanding the requisite studies, time frame, and potential cost of obtaining a wetlands approval. It appears that the requisite studies to support a permit application could take months or years (dependent upon rainfall patterns) to collect the data required for, as an example, surface water flow and groundwater assessments. It is entirely possible that the installation of groundwater wells and/or weirs to collect data to support a permit application may cause more damage than the proposed act for which a permit is being sought.

**Vernal Pools** - In the definition of the vernal pool, it is unclear that to be deemed a vernal pool an area has to support the cited specialized species, or if the designation is based only on the physical characteristics and the *potential* to support specialized species. It is also unclear in the following definition of wetlands (which includes vernal pools as a geographic area) if the intent is to regulate only those areas greater than one-fourth of an acre in size. If the municipality intends to regulate vernal pools less than one-quarter acre in size, it needs to be clearly stated. There are specific criteria, such as those used by the Natural Heritage and Endangered Species Program (NHESP) of the State of Massachusetts, to document and define vernal pools.

I have reviewed the landowner agreement circulated by the Cornell Cooperative Extension of Dutchess County and aside from identifying wildlife species and counting amphibian egg masses there are no criteria identified for how vernal pools are to be ranked. The Cary Institute release of 27 January 2009 cites a ranking system to be used to “distinguish between high quality habitats and those of lesser and degraded condition” but does not cite the ranking criteria or if areas identified as being of lesser value, degraded, or of no value would be exempt from regulation.

Vernal pools, by their definition, are ephemeral habitats that are influenced by rainfall, groundwater level, snowmelt, and temperature. Vernal pools are variable in appearance, water source, the timing of filling, duration of inundation, surrounding upland habitat, and plant and animal use. As an example, due to the below-average rainfall early this year, some vernal pools east-of-Hudson did not fill or featured very low water levels in March and early April. In addition, areas that may appear to be vernal pools do not support vernal pool-dependent species because they do not, under typical precipitation patterns, hold water long enough for these species to complete their breeding cycle.

In summary, there needs to be a robust definition of how vernal pools are to be identified, ranked, and regulated.

Thanks you for your time and consideration of my comments.